

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-20224-CR-LENARD/O'SULLIVAN

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENARO MEJIA,

Defendant.

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ORDER

THIS MATTER came before the Court on the Motion for Contempt and Return of Property (DE# 215, 2/25/19) filed by the defendant pro se. As such, the defendant's motion should be liberally construed. See Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

ANALYSIS

On February 25, 2019, the plaintiff filed Motion for Contempt and Return of Property (DE# 215, 2/25/19) (hereinafter "Motion for Contempt") seeking the government's compliance with a prior Order (DE# 206, 5/21/18) requiring the return of certain property. The government stated in its response that because the defendant is in custody it needed to make arrangements with a third-party to receive the subject property. See Response to Defendant's Motion for Contempt and Return of Property [DE 215] (DE# 222 at 2, 3/14/19). The government further stated that "[o]n March 7, 2019, prior counsel for the Defendant, Barry E. Witlin, Esq., agreed to take custody of

the Property and delivery of the Property at his office” and that the following day “Patty Fanelli, counsel’s legal assistant, received the Property as indicated in the attached property receipts (Attachment 1).” Id. The government provided no explanation for the approximately nine-and-a-half month delay between the date of the Court’s Order (DE# 206) and the delivery of the property.

In his reply, the defendant does not take issue with the government’s representation that the property was delivered to the defendant’s former counsel’s office on May 8, 2019. Nonetheless, the defendant argues that the government should still be held in contempt for the unexplained delay in complying with an Order of this Court. Reply (DE# 226 at 2, 4/18/19) (stating that “[w]hile the issue of the return of property appears presently resolved (pending return of the items by Mr. Witlin’s office for which purpose he is being copied on the instant Reply), it remains that Plaintiff flaunted the authority of this Court for nearly ten months by ignoring the May 2018 Order, and would have continued to do so absent Defendant’s current filings.”).

The district court’s power to find a party in civil contempt for disobeying court orders stems from its inherent power to enforce compliance with its lawful orders. Citronelle-Mobile Gaterhin, Inc. v. Watkins, 943 F.2d 1297, 1301 (11th Cir. 1991). Generally, sanctions for civil contempt serve two purposes: (1) to coerce the contemnor into compliance with the Court’s order; and (2) to compensate the complainant for losses sustained as a result of the contumacious behavior. McComb v. Jacksonville Paper Co., 336 U.S. 187, 191 (1948) (citation omitted); United States v. Rizzo, 539 F.2d 458, 463 (5th Cir. 1976).

The Court will exercise its discretion and not hold the government in civil

contempt for failing to timely comply with undersigned's prior Order (DE# 206). Here, the parties do not dispute that, albeit belatedly, the government has complied with the undersigned Order (DE# 206) by delivering the subject property to the defendant's former counsel's office. The defendant has not identified any losses he has incurred resulting from the government's delay in complying with the Order (DE# 206). At all relevant times, the defendant has been in custody and would not have had access to the subject property.

CONCLUSION

For the reasons stated herein, it is

ORDERED AND ADJUDGED that the Motion for Contempt and Return of Property (DE# 215, 2/25/19) is **DENIED**.

DONE AND ORDERED, in Chambers, at Miami, Florida this **26th** day of April, 2019.



JOHN J. O'SULLIVAN
CHIEF UNITED STATES MAGISTRATE JUDGE

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